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AN INTERESTING CONSTITUTIONAL QUESTION.

HOW UNAUTHORIZED GUBERNATORIAL APPOINTMENTS TO THE UNITED STATES SENATE MAY BE ATTACKED.

To the lawyer there is, perhaps, a no more interesting document than the Constitution of the United States. Framed by master minds who knew the wisdom of declaring the rights and privileges of the central government without defining them, and construed by the most astute legal intellects, it stands as a monument to the learning and understanding of the American people. It expands with the nation and is ever ready to include within its grasp new conditions which may arise so that, with few changes in its verbiage, it has already grown a hundred fold since its execution. Applied from time to time to existing facts, there are now few cases in which its construction is not required because of some new condition or conditions. There are still, however, some questions which might have been presented in the 18th Century but which have been left undiscussed until the present day, and among them is the subject of our paper.

The Supreme Court of the United States construes the Constitution, and until its decision has been rendered upon any clause, that clause remains, strictly speaking, undefined. The Supreme Court speaks and, as to the application of the Constitution to the facts before it, its words are final. But where it has not spoken it is proper to discuss what its construction might be of one of those undefined clauses such as that which we are now to treat, viz.: "Each house shall be the judge of the *elections, returns and qualifications* of its own members." Part of Article I, Section 5.

It is conceded that under this clause, each house is the sole judge of "the elections, returns and qualifications of its own members," but the lay mind will immediately inquire what bearing this clause has upon gubernatorial appointments which are neither elections, returns nor qualifications. This inquiry brings us directly to the burden of our subject.

Section 3 of Article I declares, *inter alia*, that, "The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

"Immediately after they shall be assembled, in consequence of the first *election*, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that only three may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any state, the executive thereof may make temporary *appointments* until the next meeting of the legislature, which shall then fill such vacancies.

"No person shall be a senator who shall not have attained to the age of thirty and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that state of which he shall be chosen."

Section 4. "The times, places and manner of *holding elections* for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at

any time by law make or alter such regulations except as to the place of choosing senators."

It is perfectly clear that the Constitution does not in express terms provide that either house shall be the judge of the *appointments* of its own members. Such a provision would, of course, only apply to the Senate, there being no power of appointment to the House of Representatives. The question, therefore, is whether or no the power to pass upon appointments is implied in the Senate. This implication might arise in one of two ways: 1. From the terms of the Constitution itself applying thereto the ordinary rules of construction; or 2. From the inherent nature of the body exercising the power.

Before considering these two possible implications it may be well to notice in passing the words used: "Elections, returns and qualifications." The word "election" is practically defined in an earlier clause above quoted which declares that a senator shall be chosen by the legislature and what the Senate shall do immediately after such election. In its broadest significance, the word cannot mean appointment, the same section declaring that in one event the executive of a state may make temporary appointments. In short, an election is a choice by the legislature representing the people, and an appointment is merely a nomination by the executive as a matter of convenience. The word "returns" used in connection with elections refers to the formalities accompanying and succeeding the actual election. *Qualifications* refers to personal requirements. To quote from the *Federalist*, No. 62, "The *qualifications* proposed for senators as distinguished from those of representatives consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age, at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter."

Having thus referred briefly to the three words used without attempting a minute examination of each, this paper being intended to be rather suggestive than argumentative, we will proceed to see how far the word "appointments" may be impliedly inserted in the Constitution. And first we must

observe the terms of the Constitution itself. In doing this let us remember that "it is established as a general rule that when a constitution gives a general power, or enjoins a duty, it also gives by implication every particular power necessary for the exercise of the one or the performance of the other. The implication under this rule, however, must be a necessary, not a conjectural or argumentative one:" Cooley's Constitutional Limitations, 78. And the implication can only be of the particular powers necessary for the exercise of the general power. Where, therefore, the Senate is given the power to judge of the elections, returns and qualifications of its own members, only those additional powers can be implied *which are necessary* to arrive at a satisfactory judgment in regard to such elections, returns and qualifications.

On the other hand, as gubernatorial appointments are merely substitutionary, only allowed to be made when an election is not practical owing to the state legislature not being in session at the time the vacancy in representation to the Senate occurs, it might be argued that the word "elections" should be held to include not only elections proper but their substitutes as well.

The objection to this argument is that it is conjectural and open to the criticism that might very well be made and which is justified by an examination of the instrument, that the framers of the Constitution did not construct phrases in that loose manner. The argument depends for its strength upon the intention of those gentlemen, and while it is conceded that intention is a very necessary element in construing doubtful or inconsistent clauses only of any instrument, it may also be urged, if intention is brought into the discussion, that the word "appointment" was intentionally omitted in order to avoid just what is now threatened in the State of Pennsylvania.

During the last session of the legislature of that state, the term of United States Senator M. S. Quay expired, and several attempts were made to elect a successor. Owing to what is commonly known as a "deadlock" the legislature failed in its attempt. Mr. Quay was one of the nominees considered by the legislature. Shortly after the adjournment

of the legislature the governor of the state appointed Mr. Quay to succeed himself. Owing to the impression that there is no remedy in courts of law, there have been many conjectures regarding the action which the United States Senate will take in the matter, the interest in which has been heightened by the fact that Mr. Quay is not the choice of the legislature of Pennsylvania.

Representation is the rock upon which our free institutions are founded. It is the mother of those institutions, gave them birth and nourished them to become the common heritage of all. This principle of government is encased in the Constitution which we regard with reverence and admiration as we regard a masterpiece of art. It is not, therefore, unreasonable to believe that, while the Constitution gave the executive of any state the power to make an individual and, perhaps, personal appointment to the United States Senate, its authors intended to protect the citizens against the abuse of that power by leaving in their hands every available instrument of restraint, and accomplished their purpose by refraining from making the Senate the judge of the appointment of its members.

Were this an argument before a court of law there might be many other points suggested in this connection, but as we are merely reviewing briefly and in a general way a constitutional question, and as there are other phases of it, we may now proceed to a brief consideration of the latter.

Having observed the terms of the instrument itself, let us secondly regard the question before us in the light of the inherent nature of the Senate. There are certain powers inherent in the highest legislative bodies. When the people, the sovereignty, come together to organize a government they "parcel out the three great powers thereof, the legislative, the executive and the judicial, among the three co-ordinate and principal depositaries to which they are committed. Though the Constitution confers upon specified courts general judicial power, there are certain powers of a judicial nature which by the express terms of the same instrument are given to the legislative body and among them" the power to judge of the elections, returns and qualifications of its members. "In such

case it may well be that a form of words in the instrument that clearly makes a gift of judicial power to one co-ordinate body should be construed as reserving the particular power thus bestowed from the general conferment of judicial power by the same instrument, at the same time, upon another co-ordinate body. The power thus given to the houses of the legislature is a judicial power, and each house acts in a judicial capacity when it exerts it. The express vesting of the judicial power, in a particular case, so closely and vitally affecting the body to whom that power is given, takes it out of the general judicial power."

It may further be stated to be a general rule of law that a supreme legislative body has, by implication, extra express grant, power to judge of the elections, returns and qualifications of its members. But where that power is expressly given there is, of course, no implication. It might also be suggested here that where the power to judge of an election is given, and there is provision for an appointment, the power to judge of which is not expressly given, the latter is not lodged exclusively in the body to whom the appointment is made. The United States Senate has, of course, the power by implication to pass upon the appointment of its members until the appointment is questioned by a court of competent jurisdiction, but that power is not, like the others, made exclusive by being given in express terms. On the contrary, the opposite conclusion might be urged with considerable force, namely: That by its omission from the express grants there is a strong implication that the Senate's jurisdiction is not to be exclusive in regard to it.

As already intimated above, this construction might be urged as appearing to make a very proper disposition of the question. Although the power to pass upon elections, etc., has been defined as judicial, it is in reality rather one of the powers incident to a jury—to pass upon facts. The judicial function is merely incidental. Election controversies consist very largely of matters of fact, such as whether one man or another has received a greater number of votes. Returns are mere matters of form, while qualifications are entirely matters

of fact. When, therefore, there may be a controversy which shall involve nothing but principles of law, it is reasonable that jurisdiction over such should not be taken from the courts of justice. A contested appointment is a controversy of that kind. One governor is not likely to appoint two men to the same position, and it is difficult to conceive of any other reason existing for attacking an appointment than that the governor was not authorized by law to make it. If this was the reasoning of our forefathers, experience has demonstrated their sagacity. There have been several gubernatorial appointments to the United States Senate, and in all cases where the appointment proper has been attacked the attack, so far as the writer is aware, has been based entirely upon constitutional incapacity in the governor making the appointment. Heretofore, the decisions of the Senate have been uniform upon the question now presented again by Mr. Quay's application for a seat. The seat has been refused on the ground that the governor can only make an appointment when, in the terms of the Constitution, "vacancies happen by resignation or otherwise during the recess of the legislature of any state." There has, therefore, been no opportunity for the possible application of the remedy about to be suggested. It is probably for this reason that the question under discussion has not already been authoritatively determined. And again there may be no opportunity for raising it if the United States Senate abides by the terms of the Constitution.

Section 2, Article III. of the Constitution provides that, "the judicial power shall extend to all cases in law and equity arising under this Constitution . . . . ." Mr. Cooley in his work entitled Constitutional Limitations says that, "so far as the instrument apportions powers to the national judiciary it must be understood for the most part as simply authorizing Congress to pass the necessary legislation for the exercise of those powers by the Federal courts, and not as directly, of its own force, vesting them with that authority. The Constitution does not of its own force give to national courts jurisdiction of the several cases which it enumerates, but an Act of Congress is essential, first: to create courts and

afterwards to apportion the jurisdiction among them. The exceptions are of those few cases of which the Constitution confers jurisdiction upon the Supreme Court by name, and although the courts of the United States administer the common law in many cases, they can recognize as offences against the nation only those acts which are made criminal and their punishment provided for by Acts of Congress."

The Act of Congress of 27th February, 1801, provides in Section 1, that the laws of the State of Maryland, as they then existed shall be and continue in force in that part of the District of Columbia, which was ceded by that state to the United States. This is an important provision when it is recalled that the common law of England was in force in Maryland at that time. The third section of the act provides that, "there shall be a court in this district which shall be called the Circuit Court of the District of Columbia; the said court and the judges thereof shall have all the powers by law vested in the Circuit Courts and the judges of the Circuit Courts of the United States."

By the fifth section the court has cognizance of all actions or suits of a civil nature at common law or in equity in which the United States shall be plaintiffs or complainants; and also of all cases in law and equity between parties, both or either of whom shall be resident or found within the district.

Under the terms of the Constitution and this act it is suggested that information in the nature of *quo warranto* proceedings might be instituted in the Supreme Court of the District of Columbia by the United States, through its proper officer, against one occupying a seat in the United States Senate by virtue of an unconstitutional appointment. The United States Government represents the people who, in this country, are the sovereign power. The late lamented James L. High in "Extraordinary Legal Remedies," says, "since under the American system all power emenates from the people who constitute the sovereignty the right to inquire into the authority by which any person assumes to exercise the functions of a public office or franchise is *regarded as inherent in the people* in the right of their sovereignty. And the title to

office being derived from the will of the people, they are necessarily vested with a right of enforcing their express will by excluding usurpers from public offices. Nor is this right in any manner impaired by statutes granting to electors in their private capacity as citizens the right to contest the election of any person assuming to exercise the functions of an office. Such statutes may have the effect of sharing the right with the elector but they do not take away the *right from the people in their sovereign capacity*."

Information in the nature of *quo warranto* is a common law remedy. In this connection it might be well to cite a passage from the opinion of Mr. Chief Justice Tillman in an old Pennsylvania case (*Commonwealth* v. *Murray*, 11 S. & R. 74), decided in 1824: "The Statute of 9 Anne not having been extended to this commonwealth all our proceedings in the nature of *quo warranto* are at common law. The ancient writ of *quo warranto* having been found inconvenient has long been discontinued and the information in nature of *quo warranto* adopted in lieu of it. But informations are not granted except in cases where the writ itself would have lain. We must inquire, therefore, what those cases are. The object of the writ of *quo warranto* seems to have been to remove some usurpation of the rights or prerogatives of the crown. It is defined by Blackstone (3 Com. 262) to be "in nature of a writ of right for the king against him who claims or usurps any office, franchise or liberty to inquire by what authority he supports his claim in order to determine the right."

Before the people, the sovereignty, can interfere, two things are requisite: First, it must appear that they have not transferred their right to any person or body of persons, and second, the court to which their petition is presented must be shown to have jurisdiction. The first of these has already been discussed and the second is now under consideration. There appears to be strong ground for the contention that, in view of the nature of the proceedings, jurisdiction of the question before us has been lodged in the Supreme Court of the District of Columbia by the language of the Constitution and the Acts of Congress. We have seen that the suit sug-

gested, information in the nature of *quo warranto*, is one to be brought by the sovereign, the United States, and that the remedy is a common law remedy.

Bearing in mind, then, that the Supreme Court of the District of Columbia (it having succeeded the Circuit Court of that district) exercises, through the adoption of the law of Maryland, a common law jurisdiction, and that information in the nature of *quo warranto* was a common law proceeding just as mandamus was a common law proceeding, the remarks of Mr. Justice Thompson in *Kendall* v. *United States, ex. rel.*, 12 Peters, 524, will throw light upon the subject:

"But let us examine the Act of Congress of the 27th of February, 1801, concerning the District of Columbia, and by which the Circuit Court is organized and its powers and jurisdiction pointed out. And it is proper, preliminarily, to remark that, under the Constitution of the United States and the cessions made by the states of Virginia and Maryland, the exercise of exclusive legislation in all cases whatsoever is given to Congress. And it is a sound principle, that in every well-organized government the judicial power should be coextensive with the legislative, so far, at least, as private rights are to be enforced by judicial proceedings. There is in this district no division of powers between the general and state governments. Congress has the entire control over the district for every purpose of government, and it is reasonable to suppose that, in organizing a judicial department here, all judicial power necessary for the purposes of government would be vested in the courts of justice. The Circuit Court here is the highest court of original jurisdiction, and if the power to issue a mandamus in a case like the present exists in any court it is vested in that court.

"Keeping this consideration in view, let us look at the Act of Congress.

"The first section declares that the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the district which was ceded by that state to the United States, which is the part lying on this side the Potomac, where the court was sitting when the mandamus was issued.

It was admitted on the argument that, at the date of this act, the common law of England was in force in Maryland, and, of course, it remained and continued in force in this part of the district; and that the power to issue a mandamus in a proper case is a branch of the common law cannot be doubted, and has been fully recognized as in practical operation in that state in the case of *Runkel* v. *Winemiller and others*, 4 Harris & M'Henry, 448. That case came before the court on a motion to show cause why a writ of mandamus should not issue, commanding the defendants to restore the Rev. William Runkel into the place and functions of minister of a certain congregation. The court entertained the motion, and afterwards issued a peremptory mandamus. And in the opinion delivered by the court on the motion, reference is made to the English doctrine on the subject of mandamus; and the court say that it is a prerogative writ, and grantable when the public justice of the state is concerned, and commands the execution of an act where otherwise justice would be obstructed: 3 Bac. Ab. 527. It is denominated a prerogative writ, because the king being the fountain of justice, it is interposed by his authority transferred to the court of king's bench, to prevent disorder from a failure of justice where the law has established no specific remedy, and where, in justice and good government, there ought to be one: 3 Burr, 1267. It is a writ of right, and lies where there is a right to execute an office, perform a service or exerc se a franchise, and a person is kept out of possession and dispossessed of such right and has no other specific legal remedy: 3 Burr, 1266.

"These and other cases where a mandamus has been considered in England as a fit and appropriate remedy are referred to by the general court, and it is then added that the position that this court is invested with similar powers is generally admitted, and the decisions have invariably conformed to it, from whence, say the court, the inference is plainly deducible that *this court may, and of right ought, for the sake of justice, to interpose in a summary way to supply a remedy, where, for the want of a specific one, there would otherwise be a failure of justice.*

"The theory of the British Government and of the common law is, that the writ of mandamus is a prerogative writ, and is sometimes called one of the flowers of the crown, and is, therefore, confided only to the king's bench, where the king, at one period of the judicial history of that country, is said to have sat in person, and is presumed still to sit. And the power to issue this writ is given to the king's bench only, as having the general supervising power over all inferior jurisdictions and officers, and is coextensive with judicial sovereignty. And the same theory prevails in our state governments where the common law is adopted, and governs in the administration of justice; and the power of issuing this writ is generally confided to the highest court of original jurisdiction. But it cannot be denied that this common law principle may be modified by the legislature in any manner that may be deemed proper and expedient. No doubt the British Parliament might authorize the Court of Common Pleas to issue this writ, or that the legislature of the states where this doctrine prevails might give the power to issue the writ to any judicial tribunal in the state according to its pleasure, and in some of the states this power is vested in other judicial tribunals than the highest court of original jurisdiction. This is done in the State of Maryland, subsequent, however, to the 27th of February, 1801. There can be no doubt but that, in the State of Maryland, a writ of mandamus might be issued to an executive officer, commanding him to perform a ministerial act required of him by law, and if it would lie in that state there can be no good reason why it should not lie in this district in analogous cases. But the writ of mandamus, as it is used in the courts of the United States, other than the Circuit Court of this district, cannot, in any just sense, be said to be a prerogative writ according to the principles of the common law.

"*The common law has not been adopted by the United States as a system in the states generally as has been done with respect to this district.*"

"Thus far the power of the Circuit Court to issue the writ of mandamus has been considered as derived under the first

section of the Act of 27th of February, 1801. But the third and fifth sections are to be taken into consideration in deciding this question. The third section, so far as it relates to the present inquiry, declares: 'That there shall be a court in this district, which shall be called the Circuit Court of the District of Columbia; and the said court, and the judges thereof, shall have all the powers by law vested in the Circuit Courts and the judges of the Circuit Courts of the United States.' And the fifth section declares: 'That the said court shall have cognizance *of all cases, in law and equity*, between parties, both or either of which shall be resident or be found within the district.'

"By the fifth section, the court has cognizance of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and also of all cases in law and equity between parties, both or either of whom shall be resident or be found within the district. This latter limitation can only affect the exercise of the jurisdiction, and cannot limit the subject-matter thereof. No court can, in the ordinary administration of justice, in common-law proceedings, exercise jurisdiction over a party unless he shall voluntarily appear, or is found within the jurisdiction of the court, so as to be served with process. Such process cannot reach the party beyond the territorial jurisdiction of the court. And besides, this is a personal privilege which may be waived by appearance; and if advantage is to be taken of it, it must be by plea or some other mode at an early stage in the cause. No such objection appears to have been made to the jurisdiction of the court in the present case. There was no want of jurisdiction, then, as to the person; and as to the subject-matter of jurisdiction, it extends, according to the language of the Act of Congress, to all cases in law and equity. This, of course, means cases of judicial cognizance. That proceedings on an application to a court of justice for a mandamus, are judicial proceedings, cannot admit of a doubt, and that this is a case in law is equally clear. It is the prosecution of a suit to enforce a right secured by a special Act of Congress, requiring of the Postmaster-General the performance of a precise, definite and specific act plainly enjoined by the

law. It cannot be denied but that Congress had the power to command that act to be done; and the power to enforce the performance of the act must rest somewhere, or it will present a case which has often been said to involve a monstrous absurdity in a well-organized government, that there should be no remedy, although a clear and undeniable right should be shown to exist. And if the remedy cannot be applied by the Circuit Court of this district, it exists nowhere. But, by the express terms of this act, the jurisdiction of this Circuit Court extends to all cases in law, etc. *No more general language could have been used.* An attempt at specification would have weakened the force and extent of the general words, 'all cases.' Here, then, is the delegation, to the Circuit Court, *of the whole judicial power in this district*, and in the very language of the Constitution, which declares that the judicial power shall extend to all cases in law and equity arising under the laws of the United States, etc., and supplies what was said by this court in the cases of *McIntire* v. *Wood*, 7 Cranch, 504, and in *M'Clung* v. *Silliman*, 6 Wheat. 598, to be wanting, namely: That the whole judicial power had not been delegated to the Circuit Courts in the states, and which is expressed in the strong language of the court, that the idea never presented itself to any one that it was not within the scope of the judicial powers of the United States, although not vested by law in the courts of the general government."

Referring to the change of the Circuit Court into the Supreme Court of the District of Columbia, to which attention has already been called, it may be well to add that the jurisdiction of the latter is the same as that of the former, as far as our subject is concerned.

In *United States* v. *Schurz*, 102 U. S. 378, Mr. Justice Miller says: "We are met at the threshold of this inquiry by a denial of the authority of the Supreme Court of the District of Columbia to issue a writ of mandamus as an original process.

"The argument is, that the jurisdiction of that court over this class of subjects is governed by section 760 of the Revised Statutes relating to the District of Columbia. That section enacts that 'the Supreme Court shall possess the same power and exercise the same jurisdiction as the Circuit Courts

of the United States.' As this court decided in *McIntire* v. *Wood*, 7 Cranch, 504, and *McClung* v. *Silliman*, 6 Wheat. 598, that the Circuit Courts of the United States possessed no such power, the argument would be perfect if no other powers on that subject existed in the Supreme Court of the district than what is conferred by the above section.

"This court, in *Kendall* v. *United States*, 12 Pet. 524, had under consideration the Act of February 27, 1801, organizing originally the courts of this district. It was held that the clause of the act declaring the laws of Maryland to be in force at that date in the part of the district ceded by her invested the Circuit Court, as it was then called, with this very power, *because it was a common-law jurisdiction*, and the common law on that subject was then in force in Maryland. This proposition has been repeatedly upheld by the court since that time, and up to the date of the revision it was no longer an open question that in a proper case the court had authority to issue the writ.

"It is now said, however, that this section being enacted as of the first day of December, 1873, defines the jurisdiction of the Supreme Court of the district as governed by the powers of the Circuit Courts of the United States over the same subject at that date, at which time it is clear these latter courts had no such power; and that, as the revision repealed all other laws on the same subject, the act concerning the law of Maryland no longer applied to the case.

"This leaves out of the process of reasoning the ninety-second section of the revision, which declares again that 'the laws of the State of Maryland, not inconsistent with this title, as the same existed on the twenty-seventh day of July, 1801, except as since modified or repealed by Congress or by authority thereof, or until so modified or repealed, continue in force within the district.' Thus the argument is precisely the same as it was in *Kendall* v. *United States*, for it was urged there, as here, that as the act creating the court measured its jurisdiction by that of the Circuit Courts of the United States, which had no jurisdiction, there could be none in the former; to which the court replied, the provision which continued in force the laws of Maryland.

"The revision has merely separated the different sections of the Act of February 27, 1801, and placed part of it in section 760 and part of it in section 92. Neither provision is repealed, and we think that both of them are retained, with the construction placed on them by this court in *Kendall* v. *United States* and the subsequent cases. But this question would seem to be set at rest by the Act of 1877, 'to perfect the revision of the statutes of the United States, and of the statutes relating to the District of Columbia.' The act amends section 763 of the Revised Statutes relating to the District of Columbia, by enacting that 'said courts shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants:' 19 Stat. 253.

"We are of opinion that the authority to issue writs of mandamus *in cases in which the parties are by the common law entitled to them* is vested in the Supreme Court of the District of Columbia."

Where there is a right there should be a remedy for its infringement and a satisfactory one. If it be true that the exclusive power to pass upon appointments to its body was withheld from the Senate because that power should not be taken from the people, it follows that the people are entitled to a remedy in the case before us and the Acts of Congress will be construed in a manner to afford that remedy if such construction is in harmony with the language of those acts.

In conclusion, it might be added that there have been some suggestions in current literature that the one remedy for unauthorized gubernatorial appointments, if confirmed by the Senate, lies in an amendment of the Constitution. It is this suggestion that has influenced the writer to offer a counter one. The question is an interesting one in itself, aside from the fact that it may never arise in a court of law, owing to the respect which the people at large, through their representatives assembled in Congress, have for the Constitution.

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